Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
McLEODUSA TELECOMMUNICATIONS	)	
SERVICES, INC.	)	
	)	CC Docket No. 98-84
	)	
Petition for Preemption of Nebraska Public	)	
Service Commission Decision Permitting	)	
Withdrawal of Centrex Plus Service by	)	
U S West Communications, Inc.	)	

COMMENTS IN SUPPORT OF THE PETITION OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC. FOR PREEMPTION, DECLARATORY RULING AND INJUNCTIVE RELIEF

The Competitive Telecommunications Association ("CompTel"),[1] by its attorneys, hereby submits these comments in support of McLeodUSA Telecommunications Services, Inc.'s ("McLeodUSA") petition for preemption, declaratory ruling and injunctive relief in the above-captioned docket.[2] As recognized by Congress in enacting Section 251 of the Telecommunications Act of 1996 ("the Telecommunications Act") and by the Commission itself in subsequent decisions, the availability of resale as an entry strategy is integral to the

1 CompTel is an industry association representing approximately 200 providers of competitive telecommunications services. Many CompTel members are competitive local exchange carriers who like McLeodUSA would be denied critical entry opportunities if Centrex is withdrawn.

2 *See Pleading Cycle Established for Comments on McLeodUSA Telecommunications Services, Inc. Petition for Preemption, Declaratory Ruling, and Injunctive Relief*, CC Docket No. 98-84 (Rel. June 10, 1998).

development of competition in the local telecommunications market. The decision by the Nebraska Public Service Commission ("Nebraska PSC") allowing U S West Communications, Inc. ("U S West") to withdraw Centrex Plus in Nebraska denies competitive local exchange carriers such as McLeodUSA this important method of entry. Accordingly, CompTel urges the Commission to move rapidly to grant the relief requested by McLeodUSA by preempting the Nebraska PSC decision sanctioning U S West's Centrex Plus withdrawal.

I. U S WEST'S WITHDRAWAL OF CENTREX SERVICES CREATES AN ENTRY BARRIER WHICH MUST BE PREEMPTED UNDER SECTION 253 OF THE TELECOMMUNICATIONS ACT

The primary issue in this proceeding is whether the decision by the Nebraska PSC permitting U S West to withdraw its Centrex service is a market entry barrier that the Commission is required to preempt pursuant to Section 253 of the Telecommunications Act. While CompTel agrees with the petitioner that U S West's actions may violate Section 251, and that the Nebraska PSC did not undertake the inquiry contemplated by the FCC when it decided to permit U S West to withdraw Centrex service, the FCC need not resolve those issues in order to grant the requested relief. Indeed, because the Nebraska PSC limited the scope of its inquiry to state law and did not address Centrex withdrawal in the Section 253 context, grant of McLeodUSA's petition would not require reviewing or reversing any factual or policy finding by the Nebraska PSC. As a result, granting the requested relief would not raise issues regarding the appropriate sphere of state and federal authority over Centrex services.

In determining whether preemption is required, the Commission need only analyze the effects of U S West's Centrex withdrawal on market entry in Nebraska. Pursuant to the mandate of Section 253, the Commission must preempt state action if it "determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement [that has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service] to the extent necessary to correct such violation or inconsistency."[3] As set forth by McLeodUSA, application of Section 253 is not limited to state actions that explicitly prohibit entry into the telecommunications market. Rather, as the Commission concluded in the *Texas Preemption Order*,[4] Section 253 requires the Commission to "preempt not only express restrictions on entry, but also restrictions that indirectly produce that result."[5] Whether intended or not, the Nebraska PSC decision has created a barrier to entry for resellers of Centrex services. As such, Section 253 requires the Commission to preempt the Nebraska PSC decision allowing U S West to withdraw its Centrex services.

II. THE NEBRASKA PSC'S APPROVAL OF U S WEST'S CENTREX WITHDRAWAL CREATES A BARRIER TO ENTRY REQUIRING COMMISSION PREEMPTION

U S West's withdrawal of Centrex service has precluded certain resellers from providing competitive local services in Nebraska. For many of these carriers, including McLeodUSA, Centrex resale has proven to be an effective platform for local market entry. In drafting the Telecommunications Act, Congress recognized that resale would be an important vehicle for the development of competition in the local services market. To that end, Congress implemented Section 251(b)(1) explicitly imposing a duty upon LECs not to prohibit resale or impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications

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[3] 47 U.S.C. §253 (a), (d).

[4] *Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 3460 (1997) ("*Texas Preemption Order*").

[5] *Id.* at 3480.

services.[6] Section 251(c)(4) imposes similar obligations upon incumbent LECs as well as the duty to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[7] Consistent with Section 251, recent Commission decisions have emphasized the importance of the resale as a method of market entry. For example, in the Michigan 271 proceeding, the Commission made it clear that the resale entry strategy is as important as the construction of new facilities and purchase of unbundled network elements.[8] Specifically, the Commission stated that "[i]t is essential for local competition that the various methods of entry into the local telecommunications market contemplated by the Act -- construction of new facilities, purchase of unbundled network elements, and resale -- be truly available."[9]

Clearly, Congress enacted Sections 251(b)(1) and 251(c)(4) to preserve resale as a viable method of entry. To allow carriers such as U S West to handpick the services offered for resale ultimately would undermine local competition. It is therefore critical that the Commission deny attempts by U S West to thwart competition by eliminating the resale offering of key services such as Centrex. Centrex is valuable to resellers for a number of reasons. First, resellers can separate the bulk product purchased from incumbent LECs to provide service to smaller customers. Centrex also offers a variety of options including vertical features that can be customized by the reseller to meet the needs of individual customers. Further, because the

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6 47 U.S.C. §251(b)(1).

7 47 U.S.C. §251(c)(4).

8 *See In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298, ¶ 21 (rel. August 19, 1997).

9 *Id.*

equipment used to provide Centrex service is located at the Central Office, resellers have access to their customers as well as all other customers served by that Central Office.

The importance of Centrex resale as an entry strategy is most clearly evidenced by McLeodUSA's exit from the Nebraska market. Significantly, since its entry into the local services market in 1993, McLeodUSA has relied upon Centrex as its platform for delivering resold local exchange service.[10] Ironically, it was only on the eve of the Telecommunications Act that U S West decided to withdraw Centrex Plus from its retail offerings. U S West's motives in withdrawing Centrex service clearly were designed to frustrate competition by eliminating the resale of Centrex service by new and emerging resellers such as McLeodUSA.[11] Unfortunately, its efforts have proven successful in Nebraska. Because Centrex resale is no longer available, McLeodUSA has been forced to exit the Nebraska local market despite the Telecommunications Act's promise of competition.[12] This result is what Congress intended to prohibit when it adopted Sections 251 and 253. Accordingly, CompTel urges the Commission to deny U S West's attempt to circumvent its resale obligations by preempting the Nebraska PSC decision allowing U S West to withdraw its Centrex service.

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10 *See McLeodUSA Petition* at 2.

11 *Id.*

12 *Id.*

III. CONCLUSION

For the reasons stated in McLeodUSA's petition and herein, CompTel submits that the FCC should grant the requested preemption, declaratory ruling and injunctive relief as expeditiously as possible.

Respectfully submitted,

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CERTIFICATE OF SERVICES

I, Marlene Borack, hereby certify that on this 10th day of July, 1998, I caused true and correct copies of the foregoing **COMMENTS IN SUPPORT OF THE PETITION OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC. FOR PREEMPTION, DECLARATORY RULING AND INJUNCTIVE RELIEF** to be served via U.S. mail, postage prepaid, upon those persons listed below.

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